IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.01.2006

CORAM

THE HONOURABLE MR.JUSTICE P. SATHASIVAM
AND
THE HONOURABLE MR.JUSTICE N. PAUL VASANTHAKUMAR

Criminal Appeal No.1007 of 2003

R. Sundararajan @
Sunder @ Raji .. Appellant/Accused-1

vs.

State rep. by
The Inspector of Police
Gudiyatham Taluk Police Station
Vellore.
(Crime No.691/2001) .. Respondent/Complainant

This criminal appeal is preferred under Sec.374 (ii) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Vellore in S.C.No.119 of 2001 dated 26.03.2002.

For Appellant : Mr. J. Shiva Ganesh

For Respondent : Mr. V.M.R. Rajendran
Additional Public Prosecutor
..

JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

R. Sundararajan @ Sunder @ Raji, first accused in Sessions Case No.119 of 2001 on the file of Additional Sessions Judge, Vellore is the appellant in the above appeal.

2. The case of the prosecution is briefly stated hereunder:

(a) A.1 is the son of the deceased. A.2 is the son of co-brother of the deceased. The deceased is a retired Police Head Constable. A.1 is a spend thrift, leading a wayward

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life, who was also involved in two theft cases. A.2's father is also a retired Police Head Constable.

(b) After the death of A.2's father, it was the deceased, who was taking care of A.2's family and performed marriage of A.2's sister. Since the deceased spent the entire retirement benefit of A.2's father at the time of A.2's sister marriage, A.2 was enemical towards the deceased. A.1 was not liked by the deceased, because of his bad activities.

(c) The deceased used to sleep in the nearby field pump set room belonging to him. On the date of occurrence, i.e., on 27/28.07.1999, at 3.00 a.m. while PW.8, wife of the deceased went to the pump set room for providing Horlicks to the deceased, she saw blood oozing out from his left ear. She shouted and informed her neighbours. PWs.1 to 4 came and saw the dead body.

(d) At 9.00 a.m. on 28.07.1999, PW.8, preferred a complaint to PW.15, Head Constable at Gudiyatham Taluk Police Station, who, in turn, registered a case in Crime No.691 of 1999 under Sections 302 and 379 IPC in Ex.P.18. On receipt of FIR, PW.16, visited the scene of occurrence and prepared observation mahazar, rough sketch and seized some of the material objects and conducted inquest over the dead body in the presence of the witnesses, and sent the body for post mortem examination.

(e) PW.9, Doctor, who attached to Government Hospital, Gudiyatham, conducted post mortem on 28.07.1999 at 2.30 p.m. and found 8 external injuries and issued post mortem certificate Ex.P.10.

(f) PW.16, Investigating Officer, arrested A.1 on 10.08.1999 and A.2 on 02.08.1999 and on the confession of A.1, recovered M.O.10 wrist watch stolen from deceased after murder from PW.5, a Pawn Broker, Chennai. He also seized M.O.9 Hammer produced by A.2. After examining all the witnesses, PW.17, Investigating Officer, filed charge sheet on 19.08.1999 under Sections 302, 379 read with 34, 109 and 114 IPC.

3. When the accused were questioned under Section 313 Cr.P.C. with reference to the incriminating circumstances found against them,

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in the evidence of prosecution witnesses, they denied the same. Accused have not examined any witness on their side.

4. The learned Additional Sessions Judge, accepting the prosecution evidence in so far as A.1 is concerned, convicted him under Section 302 IPC and sentenced to life imprisonment and to pay fine of Rs.3,000/-, in default to undergo rigorous imprisonment of one year. A.1 was also convicted under Section 404 IPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo one month rigorous imprisonment. Both the sentences are to run concurrently. Questioning the same, A.1 has filed the present appeal. The trial Court acquitted A.2.

5. Heard Mr. J. Shiva Ganesh, learned counsel for the appellant and Mr. V.M.R. Rajendran, learned Additional Public Prosecutor for the State.

6. The only point for consideration in this appeal is, whether the prosecution has established both the charges under Sections 302 and 404 IPC against A.1, beyond all reasonable doubts?

7. Admittedly, there is no eye witness to the occurrence. According to the prosecution, the deceased was murdered at the early hours, viz., at 3.30 a.m. on 27/28.07.1999 in the field pump set room. In the absence of direct evidence, the prosecution heavily relied on the following circumstances in order to connect A.1 with the crime.

(i) There was ill-feeling between the deceased and A.1 and A.1 was not liked by his deceased father, since he was leading a wayward life. The said aspect was spoken to by PWs.1 and 8;

(ii) Recovery of MO.9 iron hammer, MO.10 HMT wrist watch, belonging to the deceased;

(iii) At the time of inquest and cremation, the appellant / A.1 absconded and his whereabouts was not known till his arrest on 10.08.1999; and

(iv) The appellant was involved in two theft cases.

8. Now, let us consider whether the prosecution has established all the above circumstances connecting A.1. According to the prosecution, the overt act attributed to A.1 is that he attacked the deceased by using iron hammer on his left side head, when A.2 caught hold the legs of the deceased. PW.1, daughter of the deceased has referred to the conduct of her brother A.1 and according to her, her deceased father was not happy with the way in which A.1 was

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leading life. PW.1 has also stated that after the death of A.2's father, all his retirement benefits were spent for the marriage of A.2's sister and no money was paid to him. So, A.2 was also not happy with the deceased. Another witness who spoke about the motive is PW.8, who is none else than the wife of the deceased and mother of A.1. However, she was declared hostile. Though motive is not a relevant factor, however, we are of the view that the case as pleaded by the prosecution for murdering his father, in the absence of any other corroborative evidence, is highly unbelievable.

9. Now, let us consider the recovery of Material Objects from A.1. Inasmuch as MO.9 iron hammer was recovered on the basis of the confession statement of A.2 and in view of the fact that the trial Court acquitted him of the charges, in this appeal we are concerned with the recovery of MO.10 HMT wrist watch alone. If the recovery of MO.10 was made in accordance with law and procedure established, there cannot be any difficulty in accepting the case of prosecution. Here, the prosecution has relied on the evidence of PW.5, one Rathanlal, Pawn Broker, No.52, Portuguese Church Street, Chennai 600 001. Ex.P.2 is a receipt issued by the said Pawn Broker. PW.5 Rathanlal has stated that the Pawn Shop stands in the name of Dhanraj Jain, his brother, and around 2 ½ years ago, one Raji (A1) came and pledged a wrist watch, for which he paid Rs.70/-. He identified A.1 as well as MO.10. Receipt Book-L series No.407 seized from the shop of Dhanraj Jain has been marked as Ex.P.2. Before going into his statement in cross examination, we verified Ex.P.2. Name of the pawner is mentioned as Raji, No.14, Shanmugarayan Street, Chennai-1, amount received as Rs.75/-, and value of the article as Rs.100/-. In the portion regarding description of the article, it is written as HMT watch and at the right hand side, the signature of Raji is available and at the left hand side one signature in Hindi is found. In the cross examination, PW.5 has stated that Ex.P.2 had been prepared by one Jayaprakash and it was he who issued the receipt. He also stated that it was Raji, 14, Shanmugarayan Street, Chennai-1, pledged the watch. He also admitted that the Hindi signature at the left bottom of Ex.P.2 is not his signature. He admitted that the signature at page 442 is his signature. No doubt, he explained that both himself as owner and his clerk used to sign and issue receipts. He also admitted that normally he used to enquire the ownership of the article. He further admitted that when the said Raji handed over HMT watch he did not enquire or ascertain the details regarding ownership of the watch. In re-examination, PW.5 has stated that the person who issued receipt, viz., Babu @ Jayaprakash is not in station and he had gone to Rajasthan.

10. Now, we will consider the evidence of Investigating Officer, PW.16. In his cross examination, PW.16 has fairly admitted that during investigation no one has mentioned the name of A.1 as Sundar or Raji. He also admitted that all of them referred him as Sundararaji. Another relevant aspect to be noted is that even after finding that the receipt Ex.P.2 stands in the name of Raji, 14,

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Shanmugarayan Street, Chennai-1, the Investigating Officer has not taken care to verify whether the said address is correct, whether any person by name Raji is residing there and whether any HMT watch had been pledged as seen from Ex.P.2. The admission of following statement in cross examination of Investigating Officer is relevant.

> "சென்னையில் வாட்சை அடகு வைத்த ரசீதில் அவர் பெயர் ராஜ் என்றுதான் உள்ளது. அந்த ராஜ் என்பவர் சென்னையைச் சேர்ந்தவர் என்று உள்ளது. எண்.14, சண்முகராயன் தெரு, சென்னை என்று உள்ளது. அந்த முகவரிக்கு சென்று அ கு ராஜ் என்பவர் உள்ளாரா, அவர் தான் வாட்சை அடமானம் வைத்தாரா என்று நான் கேட்டுத் தெரிந்துக் கொள்ளவில்லை. ஆகவே அவ்வாறு அந்த முகவரியில் ராஜ் என்ற ஒருவர் இருக்கிறாரா என்பதோ அவர் தான் அடமானம் வைத்தாரோ என்பதோ எனக்குத் தெரியாது. எதிரியே தான் தான் அவ்வாறு முகவரியைக் கொடுத்ததாக கூறினார். "

11. From the analysis of evidence of PW.5 and PW.16 as well as Ex.P.2, the following infirmities are found:

> "(i) Rathanlal, who spoke about Ex.P.2 is not the author of the same. As said earlier, he fairly admitted that the signature at left side bottom of the receipt Ex.P.2 belongs to Babu @ Jayaprakash, and admittedly, the said person was not examined. Further, even according to PW.5, the pawn broker shop "Dhanraj Jain" belongs to his brother. In such a circumstance, it is not safe to give importance to the evidence of PW.5.
>
> (ii) Though in Ex.P.2, the name and address, i.e., Raji, 14 Shanmugarayan Street, Chennai-1 has been specifically stated, admittedly, the Investigating Officer, PW.16 has not taken any effort to verify the said address in order to find out the genuineness of the same. There is no explanation at all for not verifying the address given in Ex.P.2.
>
> (iii) Though prosecution claims that A.1 is called Sundarrajan @ Sundar @ Raji, except PW.16, none of the relatives mentioned the alias name, particularly, PW.1, his sister, and PW.8, his mother, who have stated the name of the accused only as Sundararajan. "

We are satisfied that there is no whisper regarding the alias name of A.1 as spoken to by PW.16 and as rightly pointed out by the learned

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counsel for the appellant, in order to make use of Ex.P.2, it was stated so by the prosecution.

12. Another relevant aspect is that while questioning the accused in respect of Question Nos.33 and 34, which referred to the evidence of PW.5 and PW.16, Ex.P.2 and M.O.10, A.1 has specifically stated that "நான் வாட்ச் எதையும் அடகு வைக்கவில்லை" (answer for Question No.33) and "அப்படி ஒரு வாட்சை நான் பார்த்ததேயில்லை" (answer for Question No.34). The learned Additional Sessions Judge failed to note all the above mentioned relevant materials while accepting the case of prosecution in so far as A.1 is concerned. Though it is stated that A.1 has involved in two theft cases, on that basis the case of the prosecution cannot be accepted. We are satisfied that the learned trial Judge failed to take note that there is no chain or link connecting the first accused with the crime. Inasmuch as the recovery of MO.10 wrist watch is highly doubtful, we are of the view that the prosecution case in so far as A.1 is concerned is liable to be thrown out. In view of our above conclusion, there is no need to consider the medical evidence regarding the cause of death.

Under the above circumstances, the judgment of conviction and sentence of the trial Court passed against A.1 in Sessions Case No.119 of 2001, is set aside and the appeal is allowed. The appellant / 1st accused is directed to be released from the prison forthwith unless he is required in connection with any other case. Fine amount, if paid, shall be refunded to the appellant.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Additional Sessions Judge
Vellore.

2. The Additional Sessions Judge
Vellore through the Principal Sessions Judge
Vellore.

3.The Judicial Magistrate, Gudiyatham.

4.-do- Thro' The Chief Judicial Magistrate, Vellore.

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5. The Inspector of Police
Gudiyatham Taluk Police Station
Vellore District.

6. The Public Prosecutor, High Court,Madras.

7. The District Collector, Vellore.

8. The Director General of Police
Mylapore, Chennai 600 004.

9.The Superintendent,
Central Prison, Vellore.
(In duplicate for Commnunication to detenu)

JE (CO)
km/21.1.

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